IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

AS.No. 529 of 1994()

OS.422/1990 of ADDL.SUB COURT,KOTTAYAM
.....

APPELLANT - DEFENDANT:

THANKAPPAN, S/O. KUTTAN,
VAZHEKKATTUVALLIL, MARAVANTHURUTHU
VADAKKUMBHAGOM MURI, KULASEKHARAMANGALAM
VILLAGE, VAIKOM TALUK, KOTTAYAM.

BY ADV. SRI.P.K.RAVIKRISHNAN
SMT.I.SHEELA DEVI

RESPONDENTS - PLAINTIFF:

JAYAKERALA CHIT FUNDS, VADAYAR P.O.,
KIZHAKKUMKAA MURI, VAIKOM, REPRESENTED BY
MANAGING PARTNER SHRI M.K. SREEDHARAN
S/SO. KRISHNAN, MURIYATTU HOUSE, VADAYAR P.O.,
KIZHAKKEKARA MURI, VAIKOM TALUK, KOTTAYAM.

BY ADV. SRI.ABRAHAM JOHN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.529 of 1994

Dated, this the 22nd day of November, 2007

JUDGMENT

The defendant in a suit for money is the appellant. Respondent/plaintiff styling himself as managing partner of Jayakerala Chit Funds filed a suit for money.

2. The averments in the plaint are as follows: The plaintiff was a registered partnership firm and the managing partner was competent to represent the firm in legal proceedings. The firm was constituted for the purpose of conducting chitties, kuries and other connected business. Most of the subscribers of the kuries conducted by the plaintiff were agriculturists. The plaintiff firm used to advance moneys to the subscribers and realise that amount by taking yield of coconut palms of the subscribers till the amounts advanced with interest were fully wiped off. Hence large quantity of coconuts were collected by the possession of the firm every month. The firm used to sell the coconuts for realisation of money due from the subscribers. The defendant is a person who was having business transactions with the plaintiff. He used to purchase coconuts from the plaintiff on credit basis also. The price of the coconut varies from time to time and fixed in accordance with the existing market rate. It was averred that on 2.5.1989 the defendant purchased 19,457 coconuts at the rate of Rs.2,460/- per thousand. On 24.5.1989 he purchased 21,863 coconuts at the rate of Rs.2,475/-

per thousand. A total amount of Rs.1,01,975.14 ps. was due to the plaintiff from the defendant. The defendant purchased coconuts undertaking to pay the amount without delay. At the time of purchase an amount of Rs.10,000/- was due to the defendant from the plaintiff. Defendant was entitled to get the amount adjusted towards the above said purchase money. Subsequent to the purchase of coconuts due to the persistent insistence on the part of the plaintiff the defendant effected payment of Rs.50,000/- in three instalments. These instalment payments were made on 18.5.1989, 20.5.1989 and on 28.5.1989 at the rate of Rs.10,000/-, Rs.15,000/- and Rs.25,000/- respectively. So altogether an amount of Rs.60,000/- was repaid and a balance amount of Rs.41,975.14 ps. with 12% interest was due to the plaintiff from the defendant from 24.5.1989. In spite of repeated demands the defendant did not make any payment. Hence a notice demanding repayment of the amount was issued for which the defendant did not send any reply. The cause of action for the suit arose on 2.5.1989 and 24.5.1989 and subsequently on 24.11.1989, the date on which the plaintiff demanded repayment of the amount.

3. The defendant filed a written statement contending that the suit is not maintainable. The averment that the chitty fund was conducting trade in coconut was denied. It was contended that Shri M.K.Sreedharan who had signed the bills made the appellant to believe that he is the office bearer of a co-operative society by name “kettuthengu sahakarana sangam” which was collecting coconuts from its members. It was contended that the defendant was a dealer in

coconuts and the plaintiff Shri M.K.Sreedharan told him that since it was a co-operative society there was no system of selling coconut on credit basis and hence the defendant used to pay the amount for the coconut purchased then and there itself. The averment that Rs.1,01,975.14 ps. was due from the defendant was denied. It was contended that no amount was due from the defendant to the plaintiff. The averment that the defendant paid money in three instalments was also denied. It was also contended that on receipt of the notice defendant met the plaintiff to enquire about the notice and then he was told that notice was issued due to a mistake and was assured that no action will be initiated.

4. Court below raised the following issues:

1. Whether the plaintiff had business in coconuts?
2. Whether the defendant had paid the value of the coconuts, which he had purchased from the plaintiff?
3. Reliefs and costs.

After trial the court below found that an amount of Rs.45,752.14 ps. with 12% interest thereon from the date of decree till realisation is due from the defendant to the plaintiff and a decree was granted to realise that amount. Challenging that decree and judgment the defendant has filed this appeal.

5. Learned counsel appearing for the appellant/defendant has argued that the finding of the court below that the respondent/plaintiff had business in coconuts was not based on any evidence. It is argued that the court below came to

such a conclusion based on an alleged admission made by the appellant. It is argued that there was absolutely no such admission made by the appellant. His definite case was that he never purchased any coconut from the respondent. The admission, if any, made was that he used to purchase coconut from a co-operative society which, according to the respondent, is not in existence. It is argued that there was absolutely no oral or documentary evidence to prove the transactions and court below failed to note that the evidence of PW1 was full of contradictions. It is argued that the court below failed to note that there was interpolation in Ext.A4 and no reliance can be placed on Exts.A4 and A5. It is argued that Ext.A8 cannot be relied on for any purpose. It is also argued that the respondent/plaintiff miserably failed to prove that on 2.5.1989 and 24.5.1989 he sold coconut on credit to the appellant/defendant. It is argued that the court below does not even bother to consider whether the suit was a simple suit for money or it is a suit on accounts.

6. Learned counsel appearing for the respondent/plaintiff has argued that these are all arguments not supported by any evidence and court below had rightly found that amounts were due from the appellant to the respondent.

7. In the plaint the specific allegation was that the appellant purchased 19,457 coconuts on 2.5.1989 and 21,863 coconuts on 24.5.1989. Ext.A4 is a receipt dated 17.1.1989. According to the appellant there was interpolation in that document. It is seen that initially the words '

were written and then it was struck off. In Ext.A4 it reads as follows:

According to the appellant the words '

' was subsequently added. According to him initially it was written that

' .....' It is submitted that the word '

is written twice. It is argued that it was due to interpolation. There was duplication of word ' ' in Ext.A4. So according to the appellant the word ' ' was subsequently added to make it appear that there was transaction between the appellant/defendant and respondent/plaintiff. Court below had not considered that aspect. According to the respondent he had no case that he sold any coconut to the appellant on 17.1.1989. Ext.A3 is a receipt dated 24.5.1989. What was written in Ext.A3 is as follows:

The words ' ' in Ext.A3 appears to be subsequently added. In Ext.A3 there was no admission to the effect that the coconuts

purchased belonged to respondent/plaintiff chitty fund. Further in the plaint the case of the plaintiff was that on 24.5.1989 he sold 21,863 coconuts. Whereas in Ext.A3 the number of coconuts sold was stated as 22,085. So this receipt also cannot be treated as one pertaining to the sale of 21,863 coconuts to the appellant by the respondent chit fund. Exts.A3 and A4 contain only the number of coconuts. The value of coconuts is not stated. Exts.A3 and A4 are silent as to whether it was cash purchase or credit purchase. The only other document produced by the respondent/plaintiff to prove the transactions is Ext.A8 which is a day book. There was a solitary entry in page 309 of Ext.A8 to the effect that on 30.5.1989 an amount of Rs.41,975.17 ps. was due from the appellant to the respondent. Even according to the respondent the amount fell due on 24.5.1989**.** The learned counsel appearing for the appellant pointed out that there are no corresponding entries in Ext.A8 on 17.1.1989, 2.5.1989, 18.5.1989, 20.5.1989, 28.5.1989 and 30.5.1989. The entry in page 309 appears to be subsequently written. The pleadings in this case are contradictory. It is argued that in paragraph 3 of the plaint it was stated that on 2.5.1989 the appellant purchased 19,457 coconuts at the rate of 2,460/- per thousand and on 24.5.1989, 21,863 coconuts at the rate of Rs.2,475/- per thousand and the appellant repaid some amounts subsequent to the purchase. But going by the dates two of the part payments were effected before 24.5.1989, i.e. before the second purchase. There was only one payment after 24.5.1989 and in which case the averment that as on 24.5.1989 an

amount of Rs.1,01,975.14 ps. was due was false. Appellant himself had admitted that he was having daily cash book and other books. Ext.A8 is not a document prepared in the ordinary course of business. This is a day book prepared by the Accountant based on entries on other documents. No such documents were seen produced . Appellant himself also admitted that his son and Accountant were well-verse with the transactions. So the respondent is not entitled to get any relief based on Exts.A3, A4 and A4. The court below went wrong in granting a decree based on Ext.A8 alone. But considering all the aspects of the matter I am of the view that the parties can be given one more opportunity to adduce evidence to prove their respective claim. For that purpose the case has to go back.

In the result, appeal is allowed. The judgment and decree passed by the court below are hereby set aside. Suit is remanded to trial court for fresh disposal in accordance with law after giving an opportunity to both sides to adduce additional evidence, if so advised. Parties shall appear before the court below on 2.1.2008.

C.M.P.No.3256/1994 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

cks

K.PADMANABHAN NAIR, J.

A.S.No.529 of 1994

JUDGMENT

22nd November, 2007.